

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. C-5200
of Claude and Ingrid Glenn,)	
Doniphan, seeking authority to)	ORDER DENYING BOUNDARY
receive advanced)	CHANGE
telecommunications capability)	
service from the Doniphan)	
exchange of Hamilton Telephone)	Entered: May 11, 2021
Company.)	

APPEARANCES:

Appearing on behalf of the Applicant:

Claude and Ingrid Glenn, pro se
5451 W Rosedale Rd
Doniphan, Nebraska 68832

Appearing on behalf of the Protestant Windstream:

Ms. Mary Jacobson
BRUNING LAW GROUP
1201 Lincoln Mall, Suite 100
Lincoln, Nebraska 68508

Appearing on behalf of the Commission:

Ms. Shana Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

BY THE COMMISSION:

On January 7, 2021, an application was filed by Claude and Ingrid Glenn of Doniphan, Nebraska, seeking authority for a boundary change to receive telephone service from the Doniphan Exchange of Hamilton Telephone Company, in lieu of telephone service from Windstream Nebraska, Inc. The Commission forwarded a copy of the application to Windstream on January 12, 2021. Notice of the application was published in The Daily Record, Omaha, Nebraska, on January 14, 2021. Windstream did not consent to the boundary change request.

Because of the lack of consent by all affected telecommunications carriers, a hearing was required by Neb. Rev.

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Stat. § 86-135. A hearing was held on April 6, 2021, in Doniphan, Nebraska and via videoconference equipment. The witnesses were located in Doniphan. Appearances were entered as indicated above.

E V I D E N C E

Mr. and Mrs. Glenn appeared pro se and testified in support of their application. Mrs. Ingrid Glenn testified that she has been having trouble with the house phone since July.¹ The problems occurred when Verizon replaced their box.² There are days where phone calls do not go through or her calls are disconnected.³ Her Internet service is not very good, but she primarily is has having trouble with phone calls.⁴ Her friends know not to call the house phone anymore. She primarily uses her cell phone.⁵

In response to questions, Mrs. Glenn testified her home phone service provider is Verizon.⁶ They have had Verizon service for about four years and everything was fine until they changed to 5G.⁷ She has not had Windstream service before.⁸ She did not think Windstream could serve her.⁹ However, she does not remember who may have told her that.¹⁰ She wants to receive service through Hamilton for both internet and telephone service.¹¹ Mrs. Glenn testified they do not live in a valley but on even flat land. There are some trees around her house.

Mr. Claude Glenn testified that the land they live on is flat.¹² There are some surrounding trees but no hills or valleys.¹³ When Verizon went to a 5G network, service became poor.¹⁴ Phone calls were dropped and people stopped calling them.¹⁵ Mr. Glenn

¹ See Direct Testimony of Ingrid Glenn, Hearing Transcript (TR) at 10:16-17.

² TR at 10:18-24.

³ *Id.*

⁴ See *id.*

⁵ See TR at 11:14-15.

⁶ See TR at 11:18-23.

⁷ See TR at 13:17-19.

⁸ See TR at 12:2-4.

⁹ See TR at 15:19-16:2.

¹⁰ See *id.*

¹¹ See TR at 12:5-16.

¹² See Direct Testimony of Claude Glenn, TR at 17:23-18:2.

¹³ *Id.*

¹⁴ See TR at 18:2-4.

¹⁵ TR at 18:4-6.

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testified that his wife has a medical alert system that does not work because of bad service.¹⁶ Mr. Glenn runs a small handyman service business, basically through his cell phone.¹⁷ But locals try to call him on the house phone and do not get through.¹⁸ He heard about Hamilton from his neighbors and they raved about the service. He would like a system that works.¹⁹

Mr. Glenn testified that his wife is home most of the time by herself and she needs a phone system that works.²⁰ Her friends from Germany quit calling her because they cannot reach her on the home phone, which is very upsetting.²¹ Their children communicate through cell phone apps and that works pretty well, but most of her friends in Germany cannot do that.²²

Upon questioning, Mr. Glenn testified that he has not had Windstream service but they did contact him to see if he was willing to take their service.²³ He has had Verizon for about 15 years.²⁴ He would like something that works.²⁵ He knows from speaking with friends and neighbors that Hamilton's service works.²⁶

Mr. Scott Barnett testified for Windstream. He testified Windstream can provide service to Mr. and Mrs. Glenn from a fixed wireless tower that at 1962 West Rosedale Drive.²⁷ They can provide Mr. and Mrs. Glenn with speeds of 100/8 Mbps.²⁸ He has performed a fiber site survey there at the home to verify the speeds.²⁹ Windstream has also provided marketing materials to Mr. and Mrs. Glenn through direct mail and also through the telephone representatives.³⁰ Mr. Barnett provided copies of the speed test data as Late-Filed Exhibit No. 7.

¹⁶ See TR at 18:7-9.

¹⁷ See TR at 18:9-14.

¹⁸ *Id.*

¹⁹ See TR at 18:15-19.

²⁰ See TR at 19:6-9.

²¹ See TR at 19:9-17.

²² See TR at 19:18-20.

²³ See TR at 22:11-16.

²⁴ TR at 24:20-23.

²⁵ See TR at 25:22-25.

²⁶ See TR at 25:25-26:3.

²⁷ See TR at 30:11-15.

²⁸ See TR at 30:16-18.

²⁹ See *id.*

³⁰ See TR at 30:19-23.

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Upon questioning, Mr. Barnett also testified that the tower is roughly 3 miles from the applicant's residence.³¹ Mr. Barnett testified that the tower site was turned up in May of 2019.³² Mr. Barnett indicated that the tower currently has roughly 20 subscribers.³³ When they get to 80 subscribers, they would need to add more capacity.³⁴ The voice service is a dial tone voice service that is a Voice over IP service.³⁵ Mr. Barnett testified that Windstream has hundreds of people on the fixed wireless service today using medical safety alert systems.³⁶ Mr. Barnett testified the cost of the 100 Mbps service with voice service would be \$42.99 including the modem.³⁷ There are no contracts required.³⁸ Mr. Barnett believed there may be a special where the service order charge is waived but he would need to check on that.³⁹ He testified Windstream would be willing to let the customer try out the service for a period of time to see if it works for them.⁴⁰ Mr. Barnett testified that Windstream could get service installed in roughly a week.⁴¹

Mr. Pat Shaw testified for Hamilton. He testified that Hamilton is willing to offer service to the Glenns.⁴² Hamilton's internet speed packages are as follows: 50/25 Mbps for \$49.95, 250/50 Mbps for \$64.95, and 1 Gig/250 Mbps for \$89.95, as well as telephone service for \$17.95 per month.⁴³ Hamilton also offers bundling with long distance service.⁴⁴ Hamilton offers battery backup for 8 hours.⁴⁵ If the customer wants additional backup they can purchase it for less than \$50.⁴⁶

Mrs. Glenn requested an opportunity to provide additional testimony. She clarified that when the Verizon technician was out to their home to test the service, they were told that everything

³¹ TR at 31:4-5.

³² TR at 31:8-9

³³ See TR at 34:4-7.

³⁴ See TR at 34:13-14.

³⁵ See TR at 34:22-35:2.

³⁶ See TR at 35:19-21.

³⁷ See TR at 36:2-4.

³⁸ TR at 37:10-12.

³⁹ See TR at 36:13-18.

⁴⁰ See TR at 36:19-24.

⁴¹ See TR at 37:22-23.

⁴² See Testimony of Mr. Pat Shaw, TR at 50:22-24.

⁴³ TR at 51:1-5.

⁴⁴ TR at 51:6-8.

⁴⁵ See TR at 53:17-18.

⁴⁶ See TR at 56:12-13.

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was fine with the service.⁴⁷ However, inside the home, service was not working.⁴⁸

O P I N I O N A N D F I N D I N G S

Hamilton and Windstream are local exchange carriers holding certificates of public convenience and necessity to provide local exchange service in their respective territories. Claude and Ingrid Glenn reside within the boundary of Windstream's local exchange and have requested a boundary change so that they may receive telephone service from the Doniphan Exchange of Hamilton. Hamilton notified the Commission that it was willing to make the boundary change and provide service to the Applicant. Windstream notified the Commission that it provided advanced telecommunications capability service as of the date of the application, and accordingly, it did not consent to the application.

Changes of a local exchange territory are governed by *Neb. Rev. Stat.* §§ 86-135 to 86-138. *Neb. Rev. Stat.* § 86-136. Section 86-136 provides that upon completion of the hearing, the Commission may grant the application if the evidence establishes each of the following:

- (1) That such applicant is not receiving, and at the time of the application is not able to receive, advanced telecommunications capability service from the telecommunications company which furnishes telecommunications service in the local exchange area in which the applicant resides;
- (2) That the revision of the exchange service area required to grant the application is economically sound, will not impair the capability of any telecommunications company affected to serve the remaining subscribers in any affected exchanges, and will not impose an undue and unreasonable technological or engineering burden on any affected telecommunications company; and
- (3) That the applicant is willing and, unless waived by the affected telecommunications company, will pay such construction and other costs and rates as are fair and equitable and will reimburse the affected telecommunications company for any undepreciated

⁴⁷ See TR at 60:4-63:3.

⁴⁸ See *id.*

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investment in existing property as determined by the [Commission]. The amount of any payment by the applicant for construction and other costs associated with providing service to the applicant may be negotiated between the applicant and the affected telecommunications company.

It is not the preference of the Commission to prevent Mr. and Mrs. Glenn from receiving the service they wish to have from Hamilton; however, we cannot disregard the plain language in the statute that says we must find applicant is not able to receive advanced telecommunications capability service from the telecommunications company which furnishes telecommunications service in the local exchange. Windstream is the telecommunications company which furnishes telecommunications service in the local exchange where the applicants reside. According to the evidence adduced at the hearing, the applicants were able to receive advanced telecommunications capability service from Windstream at the time of the application. Windstream's testimony and exhibits established that at the time of the application, the applicants were able to receive its service, and that the speeds offered are 100/8 Mbps.⁴⁹ Accordingly, we find that subsection (1) of § 86-136 has not been met.

In prior cases, we have granted boundary changes when an applicant was unable to receive advanced telecommunications capability service at the time the application was filed. Those applications included evidence that there was no advanced telecommunications capability service available at the time of the application; or, when there was service, the service received was not a reliable form of service which could be considered advanced telecommunications capability service.

Given the fact that the applicants have not yet tested the service that Windstream provides, we do not have any evidence indicating that the service is not as fast or reliable as Windstream claims. We note, however, that the service received from a fixed wireless technology may have variances due to distance and terrain. Accordingly, we find that although we deny this

⁴⁹ We also draw attention to a bill which recently passed in the legislature, LB 338 (signed May 5, 2021), which would change the definition of advanced telecommunications capability service to require minimum speeds of 100/20 Mbps. However, we must apply existing law to this application. Should the applicant re-apply after the effective date of the new law, we would require a showing that the applicant was not able to receive advanced telecommunications capability service at speeds of 100/20 Mbps.

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application, the applicants should be permitted to re-file without incurring a second application fee in the event that the service is not delivered as promised. We are encouraged by the fact that Windstream does not require customers to sign contracts for their service. But we further urge Windstream to offer the applicants a service they can test out for a period of time without incurring additional out-of-pocket expenses other than the monthly recurring charge.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission the above-captioned application be and it is hereby denied with leave to re-file the application as provided herein.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 11th day of May, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Rod Johnson
Crystal Broadus
Mary Kadden
Tim Schram

Don Wooten
Chair

ATTEST:

Michael S. Hyatt
Executive Director